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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

KRISTINE L. ADAMS, Plaintiff and Appellant, v. NEWPORT CREST HOMEOWNERS ASSOCIATION et al., Defendants and Respondents.	G044230 (Super. Ct. No. 05CC05516) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Ronald L. Bauer, Judge. Affirmed.

Kristine L. Adams, in pro. per., for Plaintiff and Appellant.

Grant, Genovese & Baratta, James M. Baratta, Christopher S. Dunakin and Aaron J. Mortensen for Defendants and Respondents.

* * *

Plaintiff and Appellant Kristine Adams (Adams) has filed two lawsuits against Newport Crest Homeowners Association and certain others, and three appeals. The trial court dismissed the first lawsuit as having been settled, even though the parties continued to squabble. (*Adams v. Newport Crest Homeowners Association* (Super. Ct. Orange County, 2007, No. 05CC05516) (Case No. 05CC05516).) In our decision in the first appeal, we affirmed the dismissal. (*Adams v. Newport Crest Homeowners Association* (Sept. 9, 2009, G039956) [nonpub. opn.].)

Adams filed a second lawsuit having to do with the settlement agreement in Case No. 05CC05516, as well as certain related matters. (*Adams v. Newport Crest Homeowners Association* (Super. Ct. Orange County, 2008, No. 07CC01390) (Case No. 07CC01390).)[1] In Case No. 07CC01390, the trial court granted a Code of Civil Procedure section 425.16 anti-SLAPP motion with respect to three out of the 15 defendants, and dismissed that lawsuit as against those three defendants. In her second appeal, Adams challenged the dismissal and we affirmed. (*Kristine L. Adams v. Scott L. Ghormley* (Feb. 8, 2011, G040728) [nonpub. opn.].)

After our decision in the first appeal was filed, the defendants in Case No. 05CC05516 returned to the trial court and filed a motion for attorney fees incurred in connection with the enforcement of the settlement agreement in that lawsuit. The court granted the motion, and awarded $58,212 in attorney fees. The order granting those fees is the subject of this, the third appeal. Adams challenges the attorney fees award on numerous grounds. We affirm.

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[1] This court notified the parties of its intention to take judicial notice of the opinion filed in *Kristine L. Adams v. Scott L. Ghormley* (Feb. 8, 2011, G040728) [nonpub. opn.] and gave them an opportunity to object. No party having objected, we took notice of that opinion by order filed December 13, 2011.

I

BACKGROUND

A. First Appeal:

In our opinion in the first appeal we stated in part:

"Plaintiff Kristine Adams (Adams) brought suit against Newport Crest Homeowners Association and certain others (collectively, Newport Crest), in connection with alleged mold, biological contamination, water intrusion, structural damage, termite and rat infestation, and other issues affecting her condominium unit . . . . The parties went to mediation and ultimately signed a settlement agreement, which entailed the payment to Adams of $500,000 from Newport Crest's insurance carrier, and a commitment to perform extensive remediation of her unit within an anticipated 90-day period. The insurance payment was made, but Adams claimed Newport Crest failed to comply with its nonmonetary performance obligations.

"Adams filed a Code of Civil Procedure section 664.6 motion to enforce the terms of the settlement agreement and to order Newport Crest to perform its obligations thereunder, and Newport Crest thereafter filed an ex parte application for an order enforcing the settlement agreement and compelling mediation. Finding that the settlement agreement required disputes thereunder to be returned to mediation, the court denied Adams's motion and granted Newport Crest's application. However, Adams did not respond to Newport Crest's request to schedule a mediation. The court, on its own motion, set an order to show cause re dismissal. After a hearing on the order to show cause, the court ordered Adams's case dismissed.

"Adams appeals from the order denying her motion and granting the application of Newport Crest, from the order dismissing her case, and from an order imposing monetary discovery sanctions against her. In attacking the order denying her motion, she insists that the settlement agreement is binding and that, for a variety of reasons, the court erred in failing to convert it to judgment. But when it comes to

challenging the order granting Newport Crest's application, Adams paradoxically maintains that the settlement agreement is completely unenforceable, due to fraud in the inducement, failure of consideration, a lack of meeting of the minds, and the invalidity of what she characterizes as a 'binding mediation' provision. In other words, if the settlement agreement is construed to include the mediation provision that it clearly does contain, then she insists the settlement agreement cannot be binding, but she desperately wants the settlement agreement to be enforced, minus the mediation provision to which she agreed. [Fn. omitted.]

"Substantial evidence supports the trial court's implied finding that the parties entered into a binding settlement agreement. Moreover, the court properly interpreted the terms of the settlement agreement to require the parties to submit disputes to the mediator before seeking judicial relief. It did not err in denying Adams's motion as framed and in granting Newport Crest's application.

"However, it would appear Adams did not like the order to mediate. Her attorney did not provide Newport Crest with dates to schedule the mediation. After she substituted her attorney out, Adams, a licensed attorney herself, did not contact Newport Crest about the mediation that had been ordered. Newport Crest had difficulty serving her with correspondence concerning the ordered mediation, and ultimately paid a private investigator to serve Adams when she was in court on an unrelated matter. Having received the correspondence, she chose not to respond. Adams has not shown that the court erred in dismissing the settled case.

"Where the sanctions order is concerned, Adams tagged the issue in her opening brief, but said that due to page limitations she could not 'complete' her argument. She saved the considerable sanctions argument for her reply brief, where Newport Crest could not respond to it. We do not countenance these tactics. Adams is deemed to have waived her arguments concerning the sanctions order.

"We affirm the order denying Adams's Code of Civil Procedure section 664.6 motion and granting Newport Crest's application, the sanctions order, and the dismissal." (*Adams v. Newport Crest Homeowners Association*, *supra*, G039956.)

B. Current/Third Appeal:

As noted at the outset, once the above-quoted opinion was filed, Newport Crest filed a motion for attorney fees. Adams challenges the granting of the motion.

II

DISCUSSION

A. Preliminary Matter:

By minute order of June 29, 2010, the court granted Newport Crest's motion for attorney fees. On July 19, 2010, Newport Crest filed a notice of ruling, to which a copy of the June 29, 2010 minute order was attached. A formal order granting the motion for attorney fees was filed on August 17, 2010.

On September 17, 2010, Adams filed a notice of appeal from the "Notice of Ruling on Motion for Attorneys Fees (post-dismissal) dated 7-19-10." Eleven days later, Newport Crest served Adams with a notice of entry of order on the motion for attorney fees. A file-stamped copy of the August 17, 2010 formal order was attached.

We note that Adams has purported to challenge a notice of ruling. A notice of ruling is neither a court order nor a judgment. It is only an informational document prepared by another party. It is not appealable. (*Engel v. Worthington* (1997) 60 Cal.App.4th 628, 630-631; Code Civ. Proc., § 904.1.) Consequently, we could stop here and dismiss the appeal.

At the same time, "'notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.' [Citations.]" (*Etheridge v. Reins Internat. California, Inc.* (2009) 172 Cal.App.4th 908,

913, fn. 7.) Although Adams stated that she was appealing from a notice of ruling, she specified that the ruling concerned the motion for attorney fees and that the notice of ruling was dated July 19, 2010. As we know, a copy of the minute order containing the ruling on the motion for attorney fees was attached to the July 19, 2010 notice of ruling, so it is clear what attorney fees ruling Adams meant to attack. Furthermore, a formal order was entered before Adams filed her notice of appeal. We are at liberty to "save" Adams's appeal by construing the notice of appeal as referring to the formal order granting the motion for attorney fees. (See *Los Altos Golf & Country Club v. County of Santa Clara* (2008) 165 Cal.App.4th 198, 202.)

We pause here to consider the irony that Adams, in her opening brief, points out the trial court's "irritation" with her failure to comply with court rules and procedures. It is a curious thing to point out. In any event, in expressing its own irritation with Adams's noncompliance, the trial court aptly observed that this court had previously admonished Adams for her noncompliance. In this her third appeal, Adams again taxes this court's patience by her continued noncompliance. This notwithstanding, we have chosen to exercise our discretion to characterize her defective notice of appeal as being a sufficient one.

B. Issues on Appeal:

(1) Introduction—

In this appeal, Adams raises four issues: (1) whether the settlement agreement provided for the recovery of attorney fees incurred in connection with the first appeal, inasmuch as she has not violated the terms of the settlement agreement; (2) whether it was premature to award attorney fees inasmuch as the dispute concerning the performance of the settlement agreement obligations has not been resolved; (3) whether the trial court abused its discretion in determining that Newport Crest was the prevailing party; and (4) whether the trial court abused its discretion in awarding attorney fees that

were not incurred in connection with the enforcement of the settlement agreement. We address these issues in turn.

(2) Settlement agreement terms—

Paragraph 12 of attachment A to the settlement agreement provides in pertinent part: "In the event that a party is found to have violated any tasks, obligations, duties, and/or other terms of this Agreement, the prevailing party in any dispute . . . regarding such will be entitled to an award of reasonable attorney's fees and costs, . . . for having to enforce any terms of this agreement. . . ."

Adams contends that there has been no finding that she violated the terms of the settlement agreement and, consequently, no attorney fees are available under paragraph 12 of attachment A to the settlement agreement. We disagree.

As our decision in the first appeal made clear, Adams attempted to circumvent the mediation requirement of the settlement agreement and take her issues concerning Newport Crest's compliance or noncompliance with nonmonetary obligations directly to the trial court. When Adams refused to mediate her claims and filed a Code of Civil Procedure section 664.6 motion instead, Newport Crest was obligated to oppose her motion in court and to file a counter motion to enforce the settlement agreement term requiring Adams to proceed to mediation. In the end, the trial court denied Adams's requested relief and granted Newport Crest's requested relief. On appeal, this court affirmed. (*Adams v. Newport Crest Homeowners Association*, *supra*, G039956.)

We held the settlement agreement made clear that issues such as those Adams raised were required to be submitted first to the mediator. We observed that in her motion, Adams had, in essence, requested that the trial court adjudicate her claims of nonperformance and issue a judgment ordering Newport Crest to perform itemized repairs, without first giving the mediator the opportunity to resolve the dispute. In other words, Adams had violated the provision of the settlement agreement requiring her to take her claims to mediation before Newport Crest would be required to incur attorney

fees opposing her in court. (*Adams v. Newport Crest Homeowners Association*, *supra*, G039956.)

In short, it is paragraph 12 of Attachment A to the settlement agreement that dictates the result in this case. As noted above, it provides that the prevailing party "in any dispute" concerning an obligation under the settlement agreement shall be entitled to attorney fees. The dispute resolved in Case No. 05CC05516 was whether the settlement agreement obligated Adams to mediate. It did. She lost that one dispute. A court has not yet addressed her claim that Newport Crest has failed to perform its remediation and related obligations under the settlement agreement. Whether she may raise this issue in the trial court is not before us.

(3) Final resolution of claims—

Next, Adams cites case authority to the effect that even when an appellate court has rendered a decision in favor of one party, it is premature for a trial court on remand to make a prevailing party determination if contract claims remain unresolved. (See, e.g., *Estate of Drummond* (2007) 149 Cal.App.4th 46; *Presley of Southern California v. Whelan* (1983) 146 Cal.App.3d 959.) She emphasizes that her issues regarding Newport Crest's performance of the nonmonetary obligations under the settlement agreement have not been resolved and that further proceedings will be required.

However, the cases she cites are distinguishable. For example, in *Presley of Southern California v. Whelan*, *supra*, 146 Cal.App.3d 959, a summary judgment in favor of the defendant was reversed on appeal. On remand, the trial court awarded attorney fees to the plaintiff under a contractual attorney fees provision. (*Id*. at p. 960.) The appellate court held this was error. It stated: "Here, . . . there is no prevailing party. The winner in the action . . . is yet to be determined. The reversal of the summary judgment is merely an interim stage of the litigation, much the same as a denial of a summary judgment motion or an overruling of a demurrer in the trial court. For this

reason, it is well settled a party who prevails on appeal is not entitled under a [Civil Code] section 1717 fee provision to the fees he incurs on appeal where the appellate decision does not decide who wins the lawsuit but instead contemplates further proceedings in the trial court [citations]. An attorney fee award under a provision such as the one involved here must wait until the lawsuit is completely and finally decided [citation]." (*Id.* at p. 961, fn. omitted.)

Adams says the issue of whether Newport Crest violated the terms of the settlement agreement has not been completely and finally decided and that further proceedings are contemplated. Consequently, she argues, *Presley of Southern California v. Whelan*, *supra*, 146 Cal.App.3d 959 shows that the award of attorney fees in this case was error. However, in *Presley*, the lawsuit was ongoing. The summary judgment having been reversed, the matter would proceed towards trial. In contrast, in the matter before us, our opinion in the first appeal did not contemplate any further litigation in Case No. 05CC05516. Rather, there was a final determination of Case No. 05CC05516, inasmuch as that lawsuit had been dismissed and we had affirmed that dismissal. There is ongoing litigation in Case No. 07CC01390, but that is a separate lawsuit.

In *Estate of Drummond*, *supra*, 149 Cal.App.4th 46, the decedent's children hired an attorney to represent them in a will contest. After the matter was settled, they filed a civil suit against the attorney alleging fraud and breach of faith. The attorney filed a petition for fees in the probate court, and the probate court granted the petition. The appellate court reversed, holding the attorney had violated the compulsory cross-complaint rule by filing his claim in the probate court instead of in the civil suit. It stated that, on remand, the attorney could move to file his claim in that lawsuit. (*Id.* at pp. 48-49.)

On remand, the decedent's children sought approximately $200,000 in attorney fees as prevailing parties in the dispute. The motion was denied and the appellate court affirmed. (*Estate of Drummond*, *supra*, 149 Cal.App.4th at pp. 48-50.)

The appellate court stated: "Dismissal of the probate petition . . . was not a 'final judgment' . . . . It determined nothing except that [the attorney] had to pursue his claims against [the decedent's children] in the civil case." (*Id.* at p. 52.)

Adams contends that is just what happened here. As she says, this court determined that she should have put her claim regarding Newport Crest's nonperformance of the settlement agreement obligations before the mediator instead of pursuing the matter in the trial court. All we did, she argues, is tell her to proceed in a different forum; we did not make a final determination on the contract dispute.

We disagree with Adams's characterization of our opinion. All its trappings aside, our decision in the first appeal resolved the discrete issue of whether Adams had violated the settlement agreement by bypassing the mediation provision and filing a motion in the trial court. Moreover, we affirmed the dismissal of Case No. 05CC05516. As this court observed in *PNEC Corp. v. Meyer* (2010) 190 Cal.App.4th 66, "[i]f an action on a contract . . . is *dismissed* . . . , a court may award attorney fees to the moving party . . . if the contract [so] provides . . . ." (*Id.* at p. 71, fn. omitted.) Although the party seeking attorney fees may sometimes be directed to another forum, as was done in *Estate of Drummond*, *supra*, 149 Cal.App.4th 46, "here, . . . the 'issue of final resolution should not depend on the plaintiff's possible *future* conduct.' [Citation.]" (*PNEC Corp. v. Meyer*, *supra*, 190 Cal.App.4th at pp. 72-73.)

We need not address each additional case Adams cites. Most of the cases she cites "for the proposition that a procedural victory does not qualify as the type of win for a mandatory attorney fee award are inapposite because [they] did not involve the final resolution of a discrete legal proceeding. [Citations.]" (*Otay River Constructors v. San Diego Expressway* (2008) 158 Cal.App.4th 796, 807.) Such cases generally "involve an interim ruling, where further proceedings *in the same litigation* were contemplated, rather than discrete legal proceedings." (*Turner v. Schultz* (2009) 175 Cal.App.4th 974, 984.) "[C]ourts have awarded attorney fees to a party obtaining an appealable order or

judgment in a discrete legal proceeding even though the underlying litigation on the merits was not final. [Citations.]" (*Otay River Constructors v. San Diego Expressway, supra,* 158 Cal.App.4th at p. 807.)

Here, the discrete legal proceeding of Case No. 05CC05516 has been resolved by dismissal, making attorney fees available because the contract so allows. In this case, the contract provides for attorney fees to the prevailing party in a dispute concerning a violation of any obligation under the settlement agreement. Adams having violated her contractual obligation to present disputes first to the mediator, and Newport Crest having prevailed in its efforts to block her circumvention of the mediation provision, Newport Crest is entitled to its attorney fees based on contract.

We wish to emphasize that in stating Case No. 05CC05516 has been resolved, we do not mean to suggest either that all disputes between the parties have been resolved or that Adams has no rights left to pursue. This is an issue for another day.

(4) Prevailing party status—

As her next point, Adams boldly asserts that she was the prevailing party in our decision in the first appeal. She says that just because "this court affirmed all of the trial court's rulings does not automatically deem the Newport Crest Defendants the 'Prevailing Party.'" Adams cites case law to the effect that in the determination of prevailing party status, the courts must look to the parties' overall litigation objectives, as shown by their pleadings, arguments and prayers. (*Estate of Drummond, supra,* 149 Cal.App.4th at p. 51.)

Although Adams provides a generally correct statement of the law, she also provides an unsupportable characterization of our prior opinion. That opinion was a clear win for Newport Crest. We held, in essence, that Adams had violated the mediation provision and we affirmed the order denying her Code of Civil Procedure section 664.6 motion. In addition, we affirmed the order granting Newport Crest's application, the order awarding sanctions against Adams and the dismissal of her lawsuit. (*Adams v.*

Newport Crest Homeowners Association, *supra*, G039956.) How can one get from there to a conclusion that Adams was the prevailing party?

Adams says that her litigation objective was to move forward and enforce the settlement agreement, whereas Newport Crest's litigation objective was to prevent her from enforcing the settlement agreement. We must disagree with this characterization as well. Adams's objective was to have the court enter judgment adjudicating Newport Crest's purported violations and directing particular remedial actions. (*Adams v. Newport Crest Homeowners Association*, *supra*, G039956.) The trial court denied her request and we affirmed the denial. Newport Crest's objective was to block the entry of any such judgment by the trial court, inasmuch as Adams had endeavored to leapfrog the mediation process. (*Adams v. Newport Crest Homeowners Association*, *supra*, G039956.) Its objective was met.

Adams argues that because we construed the settlement agreement to require that disputes be brought before the mediator before they may be taken to the trial court, the thrust of the opinion was that the dispute was not over—she simply had to go to mediation to resolve her claims. She twists this thought into a perceived holding that Newport Crest was not the prevailing party on its attempts to block her enforcement efforts because it would be required to face her at mediation. This is quite a contortion of our opinion indeed. In a nutshell, we simply said that the trial court properly denied Adams's request for a judgment inasmuch as she had failed to comply with the mediation provision. That's really about it. Inasmuch as the decision in the first appeal was a clear win for Newport Crest, the trial court was correct in determining Newport Crest to be the prevailing party. (*Estate of Drummond*, *supra*, 149 Cal.App.4th at p. 50.)

As we have already explained, this does not mean that Adams has no avenue for seeking redress of her grievances. We are not declaring that Adams is foreclosed from pursuing whatever legal remedies she may have, should the parties first mediate their dispute. This issue is not before us.

(5) Amount of attorney fee award—

(a) background

In its motion for attorney fees, Newport Crest requested $96,031 for attorney fees incurred to enforce the settlement agreement. The fees were for 576.8 hours of work. The fees were broken down as: (1) $784 for 4.9 hours for the initial file review; (2) $12,640 for 79 hours with respect to motions to enforce the settlement agreement; (3) $11,870 for 72.7 hours pertaining to the OSC re dismissal and related motion; (4) $44,303 for 260.8 hours incurred during the appeal process up through the appellate opinion; (5) $4,944 for 30.9 hours of preappeal legal research; (6) $11,557 for 68.3 hours of postappeal legal research; and (7) $9,933 for 60.2 hours pertaining to other evaluations and communications regarding the settlement.

In its reply in support of motion for attorney fees, Newport Crest adjusted its request downward. It withdrew its request for attorney fees incurred before Case No. 05CC05516 was dismissed. Newport Crest requested $63,380 for attorney fees incurred from the time Adams filed her notice of appeal. It sought: (1) $44,303 in fees for 260.8 hours of work performed during the appeal process up through the appellate opinion; (2) $11,557 for 68.3 hours of postappeal legal research; and (3) $7,520 for 44 hours of work in preparing the attorney fees motion, the reply and the motion to strike opposition.

In support of its motion, Newport Crest filed a declaration of Attorney Aaron J. Mortensen. The declaration provided a nine-page description of services rendered and procedural history, to which 55 pages of detailed billing records were attached. The declaration noted that Adams filed her notice of appeal on February 27, 2008, and this court rendered its decision on September 9, 2009. The billing records were dated April 8, 2008 through May 12, 2010, and showed over $98,000 in fees incurred during that time period. The descriptive portion of the declaration grouped services performed into nine categories, valued at over $81,000.

Adams filed 23 pages of line-item objections to Attorney Mortensen's declaration and the supporting invoices. She noted, for example, that some of the fees were incurred in connection with ongoing proceedings in Case No. 07CC01390, rather than Case No. 05CC05516, and that some of the fees were incurred with respect to matters unrelated to the appeal.

In its minute order granting the motion for attorney fees, the court stated: "In their original Reply . . . , the Newport Crest Defendants limited their request to the fees incurred after Adams filed her Notice of Appeal. That sum was $63,380. This claim was based upon a very modest hourly rate of $170 that is well within reason for attorneys with this experience and skill. In general, the services described in the moving parties' records and the times devoted to those tasks are also appropriate. However, the court will make two downward adjustments. First, 17.9 hours of work were devoted to matters other than the present case. (The parties are also involved in case 07CC01390.) Second 12.5 hours were [charged] to tasks not substantively related to this appeal (e.g., storage). Reducing the hourly total by 30.4 hours results in a reduction of the fees by $5,168. The court will award the remaining balance of $58,212."

(b) argument and analysis

"We review an order granting or denying fees for an abuse of discretion. [Citation.]" (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 148.) "'[W]e will not disturb the trial court's decision unless convinced that it is clearly wrong, meaning that it is an abuse of discretion. [Citations.]'" (*Ibid.*) "The only proper basis of reversal of the amount of an attorney fees award is if the amount awarded is so large or small that it shocks the conscience and suggests that passion and prejudice influenced the determination. [Citation.]" (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1134.)

Adams claims the trial court abused its discretion in making the downward adjustment of $5,168. She says the downward adjustment should have been $21,503. She offers many reasons for her position, none of which we find persuasive.

As Adams duly points out, the dollar figures in the fee request, Attorney Mortensen's declaration, and the invoices, did not correlate. Newport Crest originally sought $96,031 in attorney fees and the invoices attached to Attorney Mortensen's declaration totaled in excess of this amount. However, Newport Crest reduced its request to $63,380. That request was substantiated by both Attorney Mortensen's declaration, which described services valued at over $81,000, and the invoices, which totaled even more. To be sure, it would have been simpler to review the fee request if the attorney declaration had described only $63,380 in services and the invoices had totaled that exact amount and no more. However, the fact that Newport Crest's evidence substantiated more fees than requested does not make the request for a smaller amount of fees improper.

On another point, Adams states that in her line-item objections she asserted that the invoices showed 19.6 hours in billings incurred with respect to Case No. 07CC01390 or other matters unrelated to Case No. 05CC05516. However, the court only reduced the fees by 17.9 hours. Likewise, she says that in her line-item objections she contended that the invoices showed $3,196 in billings incurred with respect to property storage issues, lien removal issues and bankruptcy issues that had nothing to do with the appeal in Case No. 05CC05516. However, the court only deducted $2,142 of that amount. We have taken a look at her line-item objections and it is not clear to us that all of the time entries she marked were unrelated to Case No. 05CC05516 or the appeal arising out of Case No. 05CC05516.

Similarly, Adams says Newport Crest improperly claimed $4,270 in fees for work involving status reports to an insurer and $2,392 for board meetings. However, it is not evident to us that those fees were incurred for services unrelated to Case No.

05CC05516. In any event, Newport Crest sought only $63,380 in fees when it provided billing records substantiating over $98,000 of work. Even if the fees in question should have been disallowed entirely, they could easily be allotted to the approximate $35,000 reduction that Newport Crest imposed upon itself. The same holds true with respect to the $7,412 in fees Adams says arose out of mediation proceedings after we rendered our decision in the first appeal and the $901 in total billings Adams says represents communications about the litigation status with prospective buyers at the condominium development.

Moreover, to the extent a party challenges an award of attorney fees based on the allegation that the billing records are inflated or the fees were incurred unnecessarily, the party requests that we reweigh conflicting evidence on appeal. (*Del Cerro Mobile Estates v. Proffer* (2001) 87 Cal.App.4th 943, 950.) This we will not do. (*Ibid.*)

Adams also claims that while the attorney declaration allotted $16,303 for the motion for attorney fees, she found only $13,551 in billing entries that she felt correlated with that motion. However, Adams concedes that in Newport Crest's reduced request for attorney fees, it sought only $7,520 in fees with respect to the motion. The trial court worked off the reduced request, as its minute order makes clear. Inasmuch as Adams acknowledges that the invoices more than substantiate the claimed $7,520, we do not see a cause for complaint.

Turning to another issue, Adams emphasizes that Newport Crest is not entitled to recover fees incurred at the trial level. However, she acknowledges that Newport Crest withdrew its request for such fees. Inasmuch as Newport Crest was not awarded fees for trial work, we do not see a reason for complaint on that point.

Finally, Adams complains in a general way that even the fees incurred exclusively in fighting the first appeal are not fully recoverable because some of the issues on appeal had to do with whether Case No. 05CC05516 was properly dismissed

and whether discovery sanctions were properly imposed. In other words, not all of the issues addressed in the first appeal had to do with issues bearing upon enforcement of the settlement agreement containing the attorney fees provision. Adams claims the court erred in failing to make any adjustment because of the mixture of compensable and noncompensable issues, though she does not suggest what the amount of any such adjustment should have been.

Case law recognizes that it may be "'"impracticable, if not impossible, to separate the multitude of conjoined activities into compensable or noncompensable time units."' [Citation.]" (*Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1085.) When that is the case, the allocation of time between compensable and noncompensable matters is not required, although the court, in its discretion, may choose to reduce fees. (*Akins v. Enterprise Rent-A-Car Co., supra,* 79 Cal.App.4th at p. 1133; *Graciano v. Robinson Ford Sales, Inc., supra*, 144 Cal.App.4th at p. 161.) Here, Adams does not offer any method that the trial court could have or should have employed to make an allocation or to arrive at a reduced figure.

Having reviewed all of Adams's points, we observe in conclusion that "[t]he award granted was significantly reduced from the original request as a result of the trial court's indication that it did not look favorably on the full request. Thus, it clearly appears that the trial court exercised its discretion. In these circumstances, we cannot conclude that the award of attorney fees shocks the conscience or suggests that passion and prejudice had a part in it. As such, we conclude that the trial court did not abuse its discretion in awarding the attorney fees that it did." (*Akins v. Enterprise Rent-A-Car Co., supra*, 79 Cal.App.4th at p. 1134.)

C. Request for Fees on Current/Third Appeal:

In its respondent's brief, Newport Crest requests attorney fees incurred with respect to this, the third appeal. Having filed no appellant's reply brief, Adams has filed

no challenge to this request. However, this fee request should have been made by a separate noticed motion. (Cal. Rules of Court, rule 8.54.) It is denied without prejudice to renewing the request in the trial court.

III

DISPOSITION

The order is affirmed. The respondents shall recover their costs on appeal.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.